



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

EXHIBIT



August 8, 2014

Ms. Michele Rodriguez
City of San Pablo
13831 San Pablo Avenue, Building 3
San Pablo, CA 94806

Dear Ms. Rodriguez:

Subject: La Quinta Hotel Project, Mitigated Negative Declaration, SCH #2014072027,
City of San Pablo, Contra Costa County

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) provided for the La Quinta Hotel Project (Project) located at 3436 San Pablo Dam Road in the City of San Pablo, Contra Costa County. The Project proposes to convert three previously undeveloped parcels totaling 3.71 acres into a four-story, 98-room hotel that will encompass 50,800 square feet and reach a maximum height of 48 feet. The Project will also consist of a primary parking area in front of the proposed building along San Pablo Dam Road and a secondary parking area to the rear of the proposed building that will be constructed on two levels on the sloped portion of the Project site and shall require three retaining walls with a cumulative height of 40 to 45 feet, for a total of 112 parking spaces. Landscaped gardens will be installed according to the City of San Pablo standards. CDFW has the following comments:

California Endangered Species Act

Please be advised that a California Endangered Species Act (CESA) Permit must be obtained if the Project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to the California Environmental Quality Act (CEQA) documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit.

Trustee Agency Authority

CDFW is a Trustee Agency with responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, CDFW is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA [Division 13 (commencing with Section 21000) of the Public Resources Code].

Responsible Agency Authority

CDFW has regulatory authority over projects that could result in the "take" of any species listed by the state as threatened or endangered, pursuant to Fish and Game Code Section 2081. If

the Project could result in the "take" of any species listed as threatened or endangered under CESA, an Incidental Take Permit (ITP) will be required. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001(c), 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080.

Alameda Whipsnake/Alameda Striped Racer

The Project has the potential to impact Alameda whipsnake/Alameda striped racer (*Masticophis lateralis euryxanthus*), a state threatened species and its associated suitable habitat. The MND relies on habitat assessments in making the determination that Alameda whipsnake/Alameda striped racer is likely not present. The MND does note that habitat assessment is not sufficient to determine presence or absence of the species but does not require surveys to be conducted and does not require feasible avoidance and minimization measures for this species. Therefore, CDFW believes Project impacts to Alameda whipsnake/Alameda striped racer cannot be ruled out and the significance of the impacts accurately determined.

CDFW advises focused surveys be conducted by a qualified biologist for Alameda whipsnake/Alameda striped racer to determine presence/absence. If Alameda whipsnake/Alameda striped racer is present, CDFW believes Project activities would result in significant impacts. In the event the focused surveys determine presence of Alameda whipsnake/Alameda striped racer, CDFW recommends the information be utilized to 1) establish baseline habitat and population density for the species; 2) discuss and identify the appropriate avoidance, minimization and mitigation measures to be included as enforceable conditions in the MND to reduce the impacts to this species to less than significant; and 3) recirculate the document to provide the opportunity for a thorough Project analysis and review of the MND conclusions. Further, if the species is detected and full avoidance is not feasible, CDFW recommends the Project applicant consult with CDFW on the necessity to obtain an ITP pursuant to Fish and Game Code Section 2081(b) prior to Project implementation. Absent species-specific survey information, the Project applicant can assume presence and acquire an ITP.

Tree Identification and Preservation

The MND should fully identify and discuss, in a separate section, the impact to trees that will occur as a result of implementation of this Project. It is advised this section contain an inventory of the number and species of trees greater than two inches diameter at breast height (dbh) to be removed as a result of implementation of this Project. In addition, CDFW recommends the avoidance of tree removal and incorporation of existing trees into the Project landscape to allow suitable wildlife habitat to persist throughout the Project site.

Furthermore, the Contra Costa County Tree Preservation Ordinance, Chapter 816-6, requires permits and/or a prohibition/avoidance of the removal of protected trees, including grading, trenching, compaction, stockpiling, or paving within the drip-line of any protected tree during the course of construction. Contra Costa County Chapter 816-6 recommends replacement at a 1:1 ratio for trees not identified or approved for removal by the County. CDFW recommends, at minimum, a 6:1 replacement ratio for oak species, 3:1 for native tree species, and 2:1 for non-native tree species. It is advised the MND be revised to include a separate section that will fully identify and discuss a mitigation measure for the replacement ratio of trees to offset any impact caused as a result of implementation of this Project.

Ms. Michele Rodriguez
August 8, 2014
Page 4

hole, or pit that is capable of allowing large (i.e. deer) and small (i.e. snakes) from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, qualified biologist/on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord, if wildlife does not leave on its own accord, consultation with CDFW is required before work can be initiated.

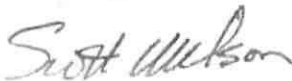
Pre-Construction Training: A pre-construction training session for all employees, contractors, or personnel otherwise working on the Project site who will take part in any action within the Project boundaries will be conducted prior to performing any work on-site. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology of the habitats and species present at the site. The Designated Biologist shall also include as part of the education program information about the distribution and habitat needs of any special-status species that may be present, legal protections for those species, penalties for violations, and project-specific protective measures. Interpretation shall be provided for non-English speaking employees, contractors, or personnel otherwise working on the Project site prior to their performing work on-site. Upon completion of the education program, employees, contractors, or personnel otherwise working on the Project sites shall sign a form stating they attended the program and understand all protection measures. These forms shall be filed at the worksite offices and be available to CDFW upon request.

Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction vertically or horizontally on-site for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation at the Project site by a Qualified Biologist/Biological Monitor.

Fence and Sign Post Restriction: Any fencing posts or signs installed temporarily or permanently throughout the course of the Project shall utilize the top three slots on the post to attach a sign or otherwise cover or fill with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey. The Qualified Biologist/Biological Monitor shall be responsible for ensuring compliance with this measure throughout the course of the Project and shall inspect each post.

If you have any questions, please contact Mr. Robert Stanley, Environmental Scientist, at (707) 944-5573; or Ms. Annee Ferranti, Senior Environmental Scientist (Supervisory), at (707) 944-5554.

Sincerely,



Scott Wilson
Regional Manager
Bay Delta Region

cc: State Clearinghouse

Hillside Limitations and Restrictions

The Contra Costa County Conservation Element 8-14 calls for hillside limitations and building and grading restrictions on open hillsides and significant ridgelines to protect hillsides with a grade of 26 percent or greater through zoning measures. While the MND does identify that special-status plant surveys will be conducted above a 178-foot grading contour it does not identify if the Project as a whole has conformed to this conservation element, specifically the construction of the multi-level parking area in the rear of the proposed building, which has the potential to impact forests, open grasslands, and has the potential to increase erosion factors which may have a negative impact on biological resources. CDFW recommends the Project proponent fully identify and discuss hillside limitations and restrictions in relation to this Project in a separate section of the MND.

Mitigation Measures

MM 4.4.2c: No more than 48 hours prior to the initiation of site clearing, a qualified biologist shall survey the work area for wildlife. CDFW recommends this measure is presented as follows: **MM 4.4.2c:** No more than 48 hours prior to the initiation of site clearing/grading, a qualified biologist shall survey the work area for wildlife and special-status species. Periodically throughout the course of the Project during the clearing/grading phase only and until the exclusionary fencing system has been installed, a qualified biologist or designated biological monitor shall conduct routine surveys for wildlife and special-status species, for a minimum of two hours per week. After completion of the grading phase and subsequent installation of exclusionary fencing, a qualified biologist or biological monitor shall periodically inspect the fence to ensure no gaps, holes, or malfunctions have occurred. If gaps, holes, or malfunctions have occurred all work shall halt and not continue until surveys within the fencing have determined no special-status species are present. If special-status species are discovered at any time throughout the course of the Project all work shall halt and not continue until consultation with CDFW has been initiated.

MM 4.4.2e: Prior to initiating of grading, all vegetation shall be cut and removed. A qualified biologist shall be present on-site for the duration of the site clearing to inspect dense vegetation ahead of equipment. Once the site has been cleared, no further biological monitoring is required as long as the wildlife fence is maintained and no breaches develop. CDFW recommends the measure is presented as follows: **MM 4.4.2e:** Prior to initiating of site grading, all vegetation shall be cut and removed. A qualified biologist shall be present on-site for the duration of the site clearing to inspect dense vegetation ahead of equipment. Once the site has been cleared a qualified biologist or designated biological monitor shall be responsible for conducting routine site inspections to ensure vegetation is kept at recommended levels to avoid providing cover for wildlife and that no breaches or deficiencies occur in wildlife fencing or in any other wildlife exclusion materials.

Additional Mitigation Measures

CDFW recommends the following avoidance and minimization measures are included in the biological resources section of the MND:

Open Trenches: Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (i.e. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench,